

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

11 UNITED STATES OF AMERICA, } 2:03-CR-467-BES-LRL  
12 Plaintiff, }  
13 v. } ORDER  
14 RAYMOND GARCIA, }  
15 Defendant. }  
16

---

17 Currently before this Court is Defendant's Objections to Report and Recommendation  
18 Denying Defendant's Motion to Suppress (#124), which was filed on May 15, 2006. The  
19 Government filed a Response (#126) on May 18, 2006. For the following reasons, the Court  
20 accepts and adopts the Magistrate Judge's Report and Recommendation (#118).

21 **I. BACKGROUND**

22 Defendant's Objections (#124) relate to an incident that occurred on October 10, 2003.  
23 On that day, Officer Scott Thomas arrived at the Las Vegas City Jail to transport Defendant  
24 to the federal courthouse for his initial arraignment. During this transport, Defendant initiated  
25 a conversation with Officer Thomas by asking about the charges against him. Officer Thomas  
26 responded, stating that Defendant was charged with possession with intent to distribute  
27 methamphetamine. Defendant stated that he thought he was transporting marijuana, not  
28 methamphetamine. Defendant then asked what his sentence could be if he were convicted.

1 Officer Thomas replied that his sentence could be 20 to life depending on the Judge. Upon  
 2 hearing this, Defendant stated that it wasn't worth \$600. Officer Thomas responded by stating,  
 3 "I'm sorry, what did you say?" To which Defendant replied, "It wasn't worth \$600. That's what  
 4 I was paid." The conversation ended when the two arrived at their destination. The entire trip  
 5 took approximately 10 minutes.

6 In his original Motion (#102), Defendant sought to suppress the statements that he  
 7 made to Officer Thomas, arguing that Officer Thomas engaged in a custodial interrogation  
 8 during the transport to the federal courthouse, therefore requiring him to give Defendant the  
 9 Miranda warnings.<sup>1</sup> The Magistrate Judge found that the aforementioned conversation did not  
 10 amount to a custodial interrogation, and Defendant objected to this finding. Thus, the sole  
 11 issue currently before this Court is whether "the statements made to the transporting officer  
 12 were the product of an in custody interrogation without the required reading of a Miranda  
 13 warning." (Objections (#124) at 2).<sup>2</sup>

## 14 II. ANALYSIS

15 When considering a magistrate judge's report and recommendation denying a motion  
 16 to suppress, this Court "may accept, reject, or modify, in whole or in part, the findings or  
 17 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1) (2005). Further, under  
 18 28 U.S.C. § 636(b)(1), if a party makes a timely objection to the magistrate judge's  
 19 recommendation, then this Court is required to "make a de novo determination of those  
 20 portions of the [report and recommendation] to which objection is made."<sup>3</sup> Defendant filed  
 21 timely objections to the Magistrate Judge's Report and Recommendation (#118); accordingly,  
 22 this Court conducts a de novo review pursuant to 28 U.S.C. § 636(b)(1). Applying this standard  
 23 of review, the Court now considers whether the Magistrate Judge erred when he found that

---

24  
 25 <sup>1</sup> Defendant was given his Miranda warnings when he was originally taken into custody. Further, it is  
 26 undisputed that Defendant voluntarily waived his Miranda rights when, following his arrest, he elected to speak  
 27 with Detective Bunn.

28 <sup>2</sup> In his Objections (#124), Defendant does not explicitly object to the Magistrate Judge's findings of fact.

<sup>3</sup> Unless otherwise ordered, a party must serve and file an objection within 10 days after being served with  
 the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1) (2005).

1 the conversation between Officer Thomas and Defendant did not constitute a custodial  
2 interrogation.

3 There is no dispute that Defendant was in custody when his conversation with Officer  
4 Thomas occurred. Thus, the remaining inquiry is whether this conversation constituted an  
5 interrogation. An interrogation is defined as not only express questioning but its functional  
6 equivalent. United States v. Moreno-Flores, 33 F.3d 1164 (9th Cir. 1994). The functional  
7 equivalent of interrogation includes “any words or actions on the part of the police (other than  
8 those normally attendant to arrest and custody) that the police should know are reasonably  
9 likely to elicit an incriminating response.” Id. (quoting Rhode Island v. Innis, 446 U.S. 291, 301  
10 (1980)); see also ” United States v. Chen, 439 F.3d 1037, 1041 (9 Cir. 2006). This is an  
11 objective test, and, although the officer’s subjective intent is relevant, it is not decisive. Moreno  
12 Flores, 33 F.3d at 1169. The focus is instead on the defendant’s perceptions. Id. Nevertheless,  
13 the police are not held accountable for the unforeseeable results of their words or actions. Id.  
14 Applying these principles, the Court must determine whether Officer Thomas’s words or  
15 actions were reasonably likely to elicit an incriminating response from Defendant.

16 During his conversation with Defendant, Officer Thomas primarily spoke in response  
17 to Defendant’s questions. In fact, the only question that Officer Thomas asked was “I’m sorry.  
18 What did you say?” Considering the context surrounding this question, the Court finds that  
19 Officer Thomas could not have foreseen that merely asking Defendant to repeat himself would  
20 elicit an incriminating response. See e.g., Moreno-Flores, 33 F.3d at 1170; see also United  
21 States v. Paredes, 388 F. Supp.2d 1185, 1193 (D. Haw. 2005) (stating that “[t]here is not  
22 evidence to suggest that Officer Espinueva should have known that his simple “Okay, what’s  
23 up?” would have elicited an incriminating response.”). Further, the Court finds that all  
24 Defendant’s other statements to Officer Thomas were voluntary and unsolicited. See e.g.,  
25 Miranda v. Arizona, 384 U.S. 436, 478 (1966) (stating that “[a]ny statement given freely and  
26 voluntarily without any compelling influences is, of course, admissible in evidence) see also  
27 United States v. Sherwood, 98 F.3d 402, 409 (9 Cir. 1996) (stating that “[s]pontaneous’ or  
28 ‘volunteered’ confessions of a suspect in custody are admissible despite the absence of a prior

1 Miranda warning.”). Considering these facts, the Court cannot find that Officer Thomas’ words  
2 and actions during his conversation with Defendant were reasonably likely to elicit an  
3 incriminating response. Accordingly, the Court agrees with the Magistrate Judge’s finding that  
4 the conversation between Officer Thomas and Defendant did not constitute an interrogation  
5 under Miranda.

6 **III. CONCLUSION**

7 Based on the foregoing,

8 IT IS HEREBY ORDERED that the Court accepts the Magistrate Judge’s Report and  
9 Recommendation (#118) and denies Defendant’s Motion to Suppress (#102).

10  
11 DATED: This 19<sup>th</sup> day of May, 2006.

12  
13  
14



15 

---

UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28